

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Bruce Kneller

Application No.: 10/785,600

Confirmation No.: 3185

Filed: February 23, 2004

Art Unit: 1617

For: MODIFIED DELTA5-ANDROSTENES
HAVING IMPROVED BIOAVAILABILITY

Examiner: B. Badio

PETITION TO REVIVE APPLICATION UNDER

37 C.F.R. §1.137(b)

MS Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully petitions to revive the subject application under 37 C.F.R. §1.137(b). In support of this Petition Applicant submits herewith:

- (1) A copy of the required reply to the outstanding Office Action previously filed on April 24, 2008;
- (2) The petition fee as set forth in 37 C.F.R. §1.17(m); and
- (3) A Statement of Facts by Bruce Kneller.

No terminal disclaimer under 37 C.F.R. §1.137(d) is required in the subject application. Applicant states that the entire delay in filing the required reply from the due date until the filing of this grantable petition was unintentional by Applicant.

The Statement of Facts by Bruce Kneller sets forth in detail the circumstances surrounding the apparent failure to timely file a Reply to the Office Action mailed from the PTO on May 3, 2007.

Applicant respectfully submits that the facts establish that the subject application was unintentionally and unavoidably abandoned for apparent failure to timely file a reply to the outstanding Office Action. Moreover, Applicant respectfully submits that the entire delay from the due date for reply to the filing of this Petition was both unintentional and unavoidable by Applicant. In view of the Decision mailed May 6, 2008, finding the showing of record inadequate to establish unavoidable delay within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a), Applicant hereby petitions for revival under 37 C.F.R. §1.137(b).

As detailed in the Statement of Facts, Applicant specifically instructed his attorney of record to file a reply to the outstanding Office Action. Accordingly Applicant did not deliberately permit the application to become abandoned.

Applicant did not learn of the abandonment of the subject application until advised by his new counsel (Ms. Treannie), as Mr. Leavitt did not advise Applicant that a reply had not been timely filed or forward the Notice of Abandonment to Applicant upon receipt from the PTO. Applicant notes that the record obtained from PAIR indicates that Mr. Leavitt also did not respond to inquiries from Examiner Badio regarding the status of the subject application. Applicant took immediate action upon learning that the subject application had apparently been abandoned. Applicant's new counsel immediately attempted to obtain the file for the subject application from Mr. Leavitt, and, failing that, diligently prepared and filed a reply based on publicly available documents and consultation with Applicant, along with a Petition to Revive under 37 C.F.R. §1.137(a) on April 24, 2008. Moreover, upon receipt of a decision of dismissal on the previously filed Petition on May 8, 2008, the undersigned immediately prepared and filed the subject Petition under 37 C.F.R. §1.137(b). Under the circumstances of Applicant's incarceration and corresponding reduced availability for consultation, this process proceeded as quickly as possible. Accordingly, Applicant respectfully submits that the entire delay from the due date for reply to the filing of this Petition and concurrently submitted reply was unavoidable and unintentional by Applicant.

Applicant believes that all requirements for a grantable petition under 37 C.F.R. §1.137(b) have been met, and Applicant respectfully urges the Commissioner to grant this

Petition without delay. Applicant believes that all fees required for this submission have been properly accounted for, but Applicant hereby authorizes the Commissioner to charge any additional fees which may be due or credit any overpayment to Deposit Account No. 50-3655 under Attorney Docket BKNL-001-101.

Dated: 5/13/08

Respectfully submitted,

By Lisa M. Treannie

Lisa M. Treannie, Esq.
Registration No.: 41,368
Morse, Barnes-Brown & Pendleton, P.C.
Reservoir Place
1601 Trapelo Road, Suite 205
Waltham, MA 02451
781-622-5930
Attorney for Applicant